

The Heredia Rules: A New Route for Protecting Privacy in Online Judicial Information



The Heredia Rules are helping Latin American courts strike a balance between judicial transparency and the protection of personal information. (IDRC Photo: Y. Beaulieu)

2005-10-06

Marty Logan

"The benefits of the information age are well-known, but rarely do we consider the potential victims. Consider a Latin American worker who, at some point in the past, has taken an employer to court. One day the worker begins looking for a new job. However, because the details of that former case are available online, potential employers may find the information and brand the employee a troublemaker."

"This labour discrimination is unknown by the victim... who is only told: 'no, you don't fit the profile that we are looking for' so he doesn't know exactly why he was excluded [from being hired]," explains Carlos Gregorio, project director at the [*Instituto de Investigación para la Justicia*](#) in Buenos Aires, Argentina. Gregorio is leading a research project, supported by the International Development Research Centre (IDRC), that sets out to strike a balance between access to information and the protection of personal data published on the Internet by courts and other judicial bodies in Latin America and the Caribbean.

Workers have been branded as having "a bad attitude" for questioning the amount of their holiday pay, asking for unpaid wages, or otherwise challenging an employer's financial decisions explains Gregorio. However, according to a set of rules developed during a series of meetings with researchers, academics, jurists, and representatives of civil society and private sector firms (such as insurance agencies) the names of workers involved in labour disputes should not be available online because such details fall into the category of "sensitive information."

"In such situations it is preferable that the personal information about the parties... is suppressed, anonymized, or replaced with initials, unless an interested person has explicitly requested otherwise, and if their request is relevant with regards to the applicable legislation," says number five of the [*Heredia Rules*](#), named for the city in Costa Rica where they were finalized in July 2003. The 10 rules are voluntary guides for judicial bodies in Latin America and the Caribbean to follow when putting information online. In the pre-Internet era, the cost of printing texts meant that only selected cases were published, but there are now an increasing number of Web sites publishing full

text judicial decisions. This development is helping to open up the judicial system, but sometimes at the cost of personal privacy.

The Heredia Rules' impact

"The Heredia Rules have not yet been endorsed unanimously by the region's judiciaries. But, they have helped increase awareness of why it is important to protect personal information," says Gregorio.

"The impact of the Heredia Rules has been to [make] the judicial branches in Latin America freeze the current situation," he says.

"The importance of protecting personal data is now known in all of the countries," adds Gregorio. "We are working with lawyers who are interested in protecting human rights. I think, a balance will be established between judicial transparency and the protection of personal information." Other data protected under the Heredia Rules include information that could identify minors or persons with a disability as well as information that could reveal race, ethnicity, political opinions, or religious convictions.

Gregorio explains that, unlike in North America and Europe, many Latin American and Caribbean (LAC) jurisdictions have not traditionally made protection of personal information a priority. For example, Peru has no data protection law. So when authorities in the country's Supreme Court decided to launch an Internet site, judicial decisions were simply posted in their entirety.

Finding a balance between two legal traditions

In developing standards to protect data, the region's courts are working at a crossroads of North American and European traditions. The North American tradition emphasizes transparency, with recourse to legal remedies in the event that information is misused. The European tradition stresses the protection of personal data. According to Gregorio, among LAC countries, Argentina best embodies the European approach, while Chile inclines strongly toward the American model.

The project's Canadian partner explains the two approaches this way. "In Spain [representing the European approach] judicial information is treated largely like administrative information that is necessary to the judicial process. However, in Canada we consider the justice system as one of three elements of state that are kept quite separate from one another. We deal with questions of privacy and transparency based on our fundamental legal principles, which demand judicial transparency," says Daniel Poulin of [LexUM](#), a research centre at Université de Montréal. LexUM provides case law and other legal material, free, via the Internet.

"In every legal system there is a different, specific balance of rights to achieve. And this balance reflects the culture of the country and its traditions. The LAC partners had to find their balance. They have done so with the Heredia Rules," adds Veronique Abad, of LexUM.

Latin American courts and the Heredia Rules

Officials at the Superior Court of Justice in Argentina's Province of Chubut were collaborating with a local university to create a software program that would encrypt names in sentencing reports when they became part of the IDRC-supported project. "The great majority of the Heredia Rules are now being followed, and we hope to continue bringing the systems into line with them to the extent of our [technical] abilities," said attorney Guillermo Consentino, the court's secretary of legal information.

"To fully apply the Rules we must modify the structure of our data systems, which we are doing. Within a short time we should have completed the task," he adds.

Contemporary pressures also influence how LAC countries decide to treat personal data on the Internet. Much of that pressure comes from a US-led campaign against judicial corruption. For example, businesspeople in the United States stress that they want to see honest, predictable judiciaries in LAC countries so that they can have the confidence needed to make investments. The issue of privacy protection is not their priority, according to Gregorio.

Latin American courts, however, continue to show interest in the Heredia Rules. In May, officials at the Supreme Court of Venezuela contacted Gregorio for help in better protecting the identity of people living with HIV/AIDS. Moreover, while Peru's Supreme Court is waiting for a data protection law before modifying its information system, judges in the country's Constitutional Court are interested in starting to modify their database right away, according to Gregorio.

The research team participated in the International Congress of Law and Information Sciences in Peru in October.

While Latin American courts have not made explicit, global changes, many countries are considering the Heredia Rules:

- In 2004, officials at the Supreme Court of Venezuela contacted Gregorio for help in better protecting the identity of people living with HIV/AIDS.
- Peru's Supreme Court is waiting for a data protection law before modifying its information system, judges in the country's Constitutional Court are interested in starting to modify their database right away, according to Gregorio.
- In Argentina, the Provinces of Chubut and Rio Negro have partially adhered to the Heredia Rules, either taking into account some of them, or following the use of the software suggested for the blocking of personal/private data, etc.
- The Judicial Council of Buenos Aires (Consejo de la Magistratura de Buenos Aires) is introducing a modification of a Regulation for the access to judicial information and has adhered to the Heredia Rules.
- The Court of Appeals of Argentina (Cámara de Apelaciones de la Nación) has adhered to the Heredia rules and is adjusting part of the information input in the Internet to these rules.
- Costa Rica has partially adhered to the Heredia Rules.
- In Brazil, the Government of the Rio Grande del Sur State is taking into account recommendations made by the Heredia Rules and are making modifications in the software used so that not all information derived from the Courts of Justice is uploaded on the Web. They are also adhering to the blocking of personal/private data.

For more information:

Dr Carlos G. Gregorio, Instituto de Investigación para la Justicia, Córdoba 659, suite 72, 1054 Buenos Aires, Argentina; Phone: (54 11) 4312 7415; Fax: (54 11) 4312 8660; Email: carlos@ijjusticia.edu.ar

Alicia Richero, Senior Program Officer, PAN Americas Networking, IDRC Regional Office for Latin America and the Caribbean, Av. Brasil 2655, 11300 Montevideo, Uruguay; Phone: (5982) 709-0042; Fax: (5982) 708-6776; Email: arichero@idrc.org.uy